

REMARKS

Applicants acknowledge receipt of the Examiner's Office Action dated February 22, 2007. This Office Action rejected all claims pending at that time. Specifically, Claims 1-31 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 24-31 were rejected under 35 U.S.C. §102 as being anticipated by Applicants' Admitted Prior Art. Claims 1-23 were rejected under 35 U.S.C. §103 as being unpatentable over Applicants' Admitted Prior Art in view of U.S. Patent No. 5,742,792 issued to Yanai et al. ("Yanai"). In light of the following remarks, Applicants respectfully request the Examiner's reconsideration and reexamination of all pending claims.

The Office Action, as noted above, rejected each of the independent claims under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicants respectfully traverse this rejection. In essence, the Office Action asserts that each of the independent claims lacks a practical application of a judicial exception since it fails to produce a useful and tangible result. With respect to Claim 1, the Office Action asserts it never realizes the claim function. In this regard, the Office Action asserts the mechanism storage managers using configuration maps to translate IO transactions and a logical memory block, as the purpose of the invention.

Applicants do not agree the claims of the application should be limited to the foregoing assertion.

MPEP 2106 describes the test for determining whether a claim produces a useful and tangible result. Here the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather on whether the final result achieved by the claimed invention is useful, tangible, and concrete. In other words, the claim must be examined to see if it includes anything more than a 35 U.S.C. §101 judicial exception. Claim 1 has been amended to recite a useful and tangible result. Specifically, independent Claim 1 recites the second secondary node receiving and storing the processed data in memory. This final result of Claim 1 is a useful and tangible result. As such, Applicants assert that independent Claim 1 is in compliance with 35 U.S.C. §101.

Independent Claim 13 is in compliance with 35 U.S.C. §101. The Office Action asserts the claimed steps are not being performed by any form of computer.

Applicants agree that independent Claim 13 is directed to a medium which stores instructions “executable” by a computer system. Even though the claimed steps of independent Claim 13 are not being performed, Claim 13 is nonetheless in compliance with 35 U.S.C. §101 since independent Claim 13 is directed to a computer readable medium which stores instructions which, when implemented by a computer system, implement a novel method. Moreover, the method implemented by the computer system in response to executing the stored instructions, is a useful and tangible result. For example, independent Claim 13 recites that the method produced by the computer system when executing the instructions, includes the first secondary node transmitting the process data to the primary node. For the reasons described above, Applicants assert that independent Claim 13 is in compliance with 35 U.S.C §101.

Independent Claim 23 was rejected based on grounds similar to those used to reject independent Claim 1. With respect to independent Claim 23 the Office Action asserts this claim never realizes the claim function; therefore, the mechanism storage managers using configuration maps to translate IO transactions and a logical memory block, as the purpose of the invention. Applicants do not agree independent Claim 23 should be limited to the foregoing. Notwithstanding, Applicants assert that independent Claim 23 is in compliance with 35 U.S.C §101. For example, independent Claim 23 recites the second secondary node receiving and storing the processed data in memory, which as argued above, produces a useful and tangible result.

Further, with respect to independent Claim 23, the Office Action asserts the claim lacks necessary physical articles or objects to constitute a machine or manufacturer within 35 U.S.C. §101. Applicants note that independent Claim 23 is written in accordance with 35 U.S.C. §112, sixth paragraph. Specifically, several of the elements recite means plus function language. The instant application provides a specification which describes that in one embodiment, for example, means for transmitting the process data to the primary node takes form in a computer system.

Given that 35 U.S.C. §112, sixth paragraph requires claims written in means plus function language to be interpreted in light of the specification, Applicants submit that in one embodiment the means for transmitting the process data to the primary node takes form in the aforementioned computer system programmed for transmitting the process data to the primary node.

Independent Claims 24 and 31 were rejected under 35 U.S.C. §101. Applicants submit that independent Claims 24 and 31 are in compliance with 35 U.S.C. §101 since these claims recite transmitting the results of the data processing. Applicants assert this limitation is a useful and tangible result.

As noted, Claims 24-31 were rejected under 35 U.S.C. §102 as being anticipated by Applicants' Admitted Prior Art. For the purposes of this response only, Applicants will presume that the background section of the instant application constitutes prior art. Notwithstanding this presumption, Claims 24-31 are distinguishable. For example, independent Claim 24 recites:

A method comprising:

processing data at a secondary node, wherein the secondary node comprises a replica of a first data;

transmitting the results of the data processing to a primary node, wherein the primary node comprises the first data.

The Office Action asserts that paragraph [0013] of the Applicants' Admitted Prior Art (APA) discloses processing data at a secondary node, wherein the secondary node comprises a replica of the first data. Thereafter, the Office Action asserts that page 2, lines 3-4 of the APA teaches transmitting the results of the data processing to a primary node. Lastly, the Office Action asserts that paragraph [0008], lines 7-9 of the APA teaches wherein the primary node comprises the first data. Applicants traverse this rejection for the following reasons.

While paragraph [0013], lines 15-19 of the APA may teach a secondary host including applications to generate transactions and replicating data, and while this may equate with Claim 24's requirement of processing data at the secondary node, wherein the secondary node comprises a replica of the first data, page 2, lines 3-4 of the APA do not teach transmitting the results of the data processing to a primary node.

In other words, while paragraph 13, lines 15-19 may teach processing data at the secondary node, the processing data is not transmitted to the primary node as alleged to be said in page 2, lines 3-4. Rather, page 2, lines 3-4 teaches “in response to receiving the read request, secondary nodes $AS_{Example}$ or $SS_{Example}$ can read and return a copy of the requested data from replica $RVA_{Example}$ or $RVS_{Example}$.” Page 2, lines 3-4 do not teach or fairly suggest data returned is returned to the primary node. Rather, one of ordinary skill in the art will interpret page 2, lines 3-4 to mean data is returned to the client computer system that generated the request to read data from volume $V_{Example}$. *See* paragraph 2, lines 9-12. Because page 2, lines 3-4 do not transmit the results of the data processing set forth in paragraph 13, lines 15-19, to the primary node, independent Claim 24 is patentably distinguishable over the cited sections of the APA.

Independent Claim 31 was rejected under the same or similar rationale that was used to reject independent Claim 24 under 35 U.S.C. §102. For reasons that independent Claim 24 is patentably distinguishable over the cited sections of the APA as noted above, Applicants assert that independent Claim 31 is likewise patentably distinguishable.

Independent Claims 1, 13, and 23 were rejected under 35 U.S.C. §103 as being unpatentable over the APA in view of Yanai. Independent Claim 1, like independent Claim 24, recites the first secondary node receiving and processing the modified data, and the first secondary node transmitting the processed data to the primary node. Like independent Claim 24, the Office Action asserts these limitations are found in paragraph 15, lines 5-8 and page 2, lines 2-4 of the APA. However, as noted above, Applicants have shown that while page 2, lines 2-4 of the APA may be interpreted as transmitting processed date, the processed data is not transmitted to the primary node. Rather, the processed data is transmitted to a client computer system that generated a request to read data. Thus, page 2, lines 2-4 of the APA cannot be read to interpret that data is transmitted to the primary node even if the data transmitted was processed by the secondary node. Because the combination of the APA and Yanai do not teach all the limitations of independent Claim 1, Applicants submit that independent Claim 1 is patentably distinguishable.

The Office Action asserts that independent Claims 13 and 23 contain limitations that are similar to Claim 1, therefore Claims 13 and 23 are rejected on the same basis that was used to reject independent Claim 1. Applicants have shown that independent Claim 1 is patentably distinguishable over the cited sections of the APA in combination with Yanai. For the same or similar reasons Applicants assert that independent Claims 13 and 23 are likewise patentably distinguishable. The remaining claims depend directly or indirectly from independent Claims 1, 13, and 24. Since these independent claims have been shown to be patentably distinguishable, it follows that the remaining claims are likewise patentably distinguishable.

CONCLUSION

Applicants submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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